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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/153,369	09/15/1998	JAMES P. KETRENOS	INTL-0075-US	5432
21906 7590 03/09/2007 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			EXAMINER LONSBERRY, HUNTER B	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 03/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/153,369	Applicant(s) KETRENOS, JAMES P.	
	Examiner Hunter B. Lonsberry	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered; or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Applicant argues that Semenzato has nothing to do with crashes, that Hullingers teachings are not pertinent to the other references, that Bopardikar has nothing to do with video stacks and tuner cards, Applicant further argues that the Safadi reference attempts to detect tampering not crashes and that references which teach taking action in the case of software errors, that do not amount to a crash are immaterial to the claimed invention. Applicant further argues that Safadi has nothing to do with a video stack or shutting down a video stack. (response pages 7-10).

Applicant argues that the Safadi reference attempts to detect tampering not crashes and that references which teach taking action in the case of software errors, that do not amount to a crash are immaterial to the claimed invention. Applicant further argues that Safadi has nothing to do with a video stack or shutting down a video stack.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The Examiner notes that Semenzato is relied upon to teach shutting down a video stack.

Further,
<http://webopedia.com/TERM/c/crash.html> defines a crash as "(n) A serious computer failure. A computer crash means that the computer itself stops working or that a program aborts unexpectedly. A crash signifies either a hardware malfunction or a very serious software bug." With regards to the Safadi reference, applicant is focusing on "tampering" while ignoring the transmission errors or indeed any other deviation, which causes the abnormal state that, results in the computing device to stop working. Further, Safadi does not limit this abnormal status to be the result of either tampering or transmission errors, rather the device is shut down as the result of failing a checksum check. The Examiner equates these errors, abnormal state, and shutting down to meet the above definition of a crash in that it includes monitoring the bios, memory, etc against precalculated values, finds a value in error and the computer itself stops working unexpectedly.
 malfunction or a very serious software bug."

The examiner notes that it is Semenzato, in combination with Bopardikar, which teach the elements of the claims. The plugin body 114B of Semenzato saves in persistent memory, data in which plugin body 114B may invoke in subsequent invocations (see column 8, lines 17-21, column 9, lines 12-20, column 10, lines 5-18). It is this functionality, which enables future access upon a crash. Further, Semenzato is relied upon for the detection of the first application crashing, not Bopardikar. Bopardikar discloses a video storage system which uses data striping across multiple hard disks to store video, when a failure occurs, the video stack is shut down in order for a healing procedure to be preformed, to remedy the problem and prevent the corruption of data (column 5, lines 22-49, column 26, line 23-column 27, line 25). Further, Bopardikar discloses that the system may be placed offline to perform the healing process, thus shutting down the video stack (column 27, lines 13-25). Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Semenzato to shut down the video stack in response to a crash as taught by Bopardikar in order to prevent the corruption of the video data. The system in Bopardikar detects a disk failure, which is a hardware malfunction and results in a system crash, the system is taken offline while a healing measure is put into place. The above description meets the definition of a computer crash as the computer stops working unexpectedly as the result of a hardware malfunction. Additionally, as Bopardikar discloses that the system may be taken offline while the healing process is being preformed (column 27, lines 13-25), the video stack must be released as the device is not in operation. Therefore it is the combination of Semenzato, Hullinger and Safadi which teach each and every element of claim 1.

W. L. 2
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